*THE HONBLE SRI JUSTICE P.S. NARAYANA

+WRIT PETITION NO.3 1 7 7 OF 2007

%Dated 16-11-2007

MULKA RAJESHWAR .. Petitioner

VERSUS

$ THE UNION OF INDIA & Ors. .. Respondents

! Counsel for the Petitioner : SRI V. MALLIK

^Counsel for Respondents: : SMT. R. RAGHAMMA

<GIST:

> HEAD NOTE:

? Cases referred:

1) 2001 (8) SCC-8
2) 2006 (4) ALD-185

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(*Special Original Jurisdiction*)

DAY, THE DAY OF NOVEMBER

TWO THOUSAND AND SEVEN.

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WRIT PETITION No.3 1 7 7 of 2006

Between:

Mulka Rajeswar … Petitioner

Versus

The Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
Freedom Fighters Pension Scheme,
New Delhi & Ors. … Respondents

Counsel for the Petitioner: Sri V.Mallik

Counsel for the Respondents: Smt. R. Raghamma,
Govt. Pleader for Revenue

O R D E R :

Heard Sri V. Mallik, learned counsel representing the writ

petitioner and Sri R.Raghamma, the counsel representing the respondents.

2. The writ petition is filed for a writ of mandamus declaring the order dated 23-12-2005 in No.52/CC/5/2004- FF (HC) issued by the first respondent as illegal, arbitrary and violative of rights guaranteed under Article 14 and 21 of the Constitution of India and based on total non-application of mind and consequently set aside the same and to pass such other suitable orders, as this court may deem fit and proper.

3. It is stated that earlier WP.No.8444 of 1995 was filed and when the State Government had rejected the claim of the petitioner in pursuant to the direction issued in the aforesaid proceedings by order dated 09-8-2000, which is to the effect to consider the original release certificate and again the petitioner filed WP.No.3635 of 2002 questioning the order dated 13-12-2001 issued by the second respondent and this Court by an elaborate order dated 28-1-2005 directed the second respondent to consider the claim of the writ petitioner without reference to co-prisoner certificate or order of detention and the Government of Andhra Pradesh, second respondent by letter dated 15-4-2005

after obtaining the personal knowledge certificate from Sri Venkata swamy, who was a freedom fighter and after taking into consideration the police custody prior to judicial detention has recommended and the first respondent on a total non-application of mind passed the impugned order dated 23-12-2005 and hence the present writ petition.

4. It is stated that the vexed issue of documentary evidence with regard to police custody was already dealt by this Court in WP.No.3635 of 2002 dated 28-1-2005 and the order of the first respondent is contrary to the said order. The relevant portion of the order in WP.No.3635 of 2002 is as hereunder:

> *On a perusal of the material on record, it is clear that as per the said Swatantra Sainik Samman Pension Scheme, persons who have suffered imprisonment in the main land jails for a period of not less than six months alone are eligible for pension. However, clause (c) of the scheme provides that in the case of under trials who were kept in jails but later convicted, the benefit of the entire period spent in jail shall be given i.e., the period spent as under trial shall also be added to the period of actual imprisonment suffered. Admittedly, the petitioner produced the certificate of release issued by the Prison Officer, Worli, which shows that he was detained in jail as a political prisoner from 02-01-1942 to 21-06-1942. Thus, the period of imprisonment falls short of 9 days. Though the petitioner pleads that prior to conviction he was in police custody for about two weeks, admittedly, there is no documentary proof to substantiate the same.*

The second respondent also states that the petitioner did not produce the co-prisoner certificate or any other evidence like arrest warrant or detention order to establish that he was in police custody or underwent imprisonment as under-trial prisoner for two weeks. The said fact has not been disputed by the petitioner, but it is stated that since he underwent the imprisonment long back in the year 1942, it is not possible for him to produce any evidence from the freedom fighters who themselves had undergone imprisonment along with him in the Worli prison. Though the explanation offered by the petitioner for his inability to produce the relevant documents appears to be genuine, since apparently he failed to satisfy the eligibility criteria prescribed under the scheme, no mandamus as such can be issued compelling the second respondent to recommend the case of the petitioner for sanction of the pension under the scheme in question. However, having regard to the fact that the petitioner is now aged about 78 years and admittedly as per the certificate of release he underwent imprisonment as a political prisoner during the year 1942 and particularly keeping in view the fact that the petitioner has been consistently pleading that he was in police custody for about two weeks prior to his conviction and imprisonment in Worli prison, I am of the view that the matter requires reconsideration and even in the absence of co-prisoner certificate or order of detention, in case any other material is placed by the petitioner to the satisfaction of the second respondent to establish his plea as to the police custody for a period of two weeks, probably it would be a fit case to recommend to the first respondent for sanction of the pension under the said scheme.

Accordingly, the impugned order dated 13-12-2001 is set aside and the writ petition is disposed of with a direction to the second respondent to reconsider the claim of the petitioner in the light of the observations made above and to pass appropriate orders in accordance with law, after affording due opportunity to the petitioner, as expeditiously as possible,

preferably within a period of eight weeks from the date of receipt of this order. No costs.

5. It is also stated that it is clear from the impugned order that the first respondent has laid undue emphasis on the co-prisoner certificate and the insistence on the same is contrary to the order passed by this court in WP.No.3635 of 2002 dated 28-1-2005 to which first respondent is a party and in view of the fact that the said direction has obtained finality.

6. Further it is stated that the insistence of the first respondent on the prescribed proforma shows that the first respondent has approached violation of right to liberty as guaranteed under Article 21 of the Constitution of India and as such the impugned action is illegal and arbitrary.

7. Further it is stated that the alleged reason given in the impugned order that how Sri Venkataswamy could issue personal knowledge certificate when he was in another jail other than Worli Prison, Bombay shows the utter non-application of mind on the part of the first respondent as to the directions contained in WP.No.3635 of 2002 dated 28-1-2005.

8. It is also stated that the petitioner already is 78 years old and fighting the litigation since 1995 and though he got all the requisite

criteria for being sanctioned freedom fighters pension but he was being denied on one reason or the other by a glorified bureaucracy and unless this Court set aside the order dated 23-12-2005 issued by the first respondent, the petitioner suffers serious and irreparable loss.

9. It is stated that the petitioner filed CC.No.1426 of 2005 and by an order dated 13-2-2006 the said CC is dismi8ssed with a liberty to file a fresh writ petition.

10. The order made in WP.No.18288 of 2005 dated 19-8-2005, the relevant portion thereof reads as hereunder:

> *In the facts and circumstances of the case, the writ petition is disposed of directing the first respondent to expeditiously, in any event with a period of three months from the date of receipt of a copy of this order, consider the petitioner's claim for grant of a freedom fighters pension duly considering the recommendations of the second respondent, dated 15-4-2005, in the correspondence bearing Ref.No.29103/FF.II-A (1)/2003*.

11. The Proceedings No.C4/899/2005 dated 30-3-2005 reads as hereunder:

GOVERNMENT OF ANDHRA PRADESH

No.C4/899/2005 Dated: 30-3-2005.

From
Sri D.V.Raju, I.A.S.,
Collector & Dist.Magistrate,
Nizamabad.

To
The Secretary to Government,
Revenue (FF-II) Department
Secretariat, AP Hyderabad (We)

Sub: SSSPS 1980 – FF Pension – WP.No.3635/02 filed by Sri Mulka Rajeshwar of Nizamabad for sanction of Freedom Fighter Central Prison – Verification of Personal Knowledge Certificate – Report submitted – Reg.

1. Govt.Revenue (FF-II) Dept.Memo.No.29103/FF-II /A1/03, dated 14-2-2005.
2. Collr.D.O.Lr.No. even dated 8-3-2005.
3. RDO Nizamabad Lr.No.B1/1508/2005, dated 22-3-2005.

***

I invite kind attention to the references cited and submit that in the reference first cited the Government while enclosing copy of Hon'ble High Court Judgment in WP.No.3635 of 2002, dated 28-1-2005 and application of Sri M.Rajeshwar Rao has requested to furnish remarks on the personal knowledge certificate issued by Sri Venkataswamy of Nizamabad district instead of co-prisoner certificate. In the reference second cited, the RDO Nizamabad has been requested to verify the bonafides of personal knowledge certificate issued by Sri Venkataswamy s/o Govind swamy of Mosra (v) of Bodhan Mandal and submit remarks in the matter.

I further submit that through reference 3rd cited, the RDO Nizamabad has reported that he has visited Mosra village of Varni Mandal on 20-3-2005 and met Sri Venkataswamy s/o Govind swamy and enquired about the personal knowledge of Sri Mulka Rajeshwar s/o Rajanna r/o Nizamabad. Sri Venkataswamy has given statement that Sri Mulka Rajeshwar had participated in Quit India Movement in the year 1942 and he is a bonafide Freedom Fighter who was imprisoned for a period of five months and 21 days from 02-1-1942 to 21-6-1942, he was put in police custody for a period of more than (10) days in Worli Police Station. The statement recorded by the RDO Nizamabad is also submitted herewith.

In view of the above, I request to communicate the orders at the earliest.

Yours faithfully,
Sd/-
Collector, Nizamabad.

// Attested //
Sd/-
District Revenue Officer,
Collectorate, Nizamabad.

12. Further the Proceedings dated 15-4-2005 reads as hereunder:

GOVERNMENT OF ANDHRA PRADESH
REVENU7E (FF-II) DEPARTMENT

Letter No.29103/FF.II-A(1)2003. Dated:15-4-2005.

From
The Special Chief Secretary to Govt.
Revenue Department,
AP Secretariat, HYDERABAD.

To
The Deputy Secretary to Government of India,
Ministry of Home Affairs (FF Division), Lok Nayak Bhavan,
Khan Market, New Delhi (W.Es)

Sir,

Sub: SSSPS.1980 – Sanction of FF Pension – Proposal of Sri Mulka Rajeshwar s/o late Rajanna of Nizamabad district in compliance of Hon'ble High Court of AP Judgment dated 28-1-2005 in WP.No.3635/2002 – Reg.

Ref: 1.From the Collector, Nizamabad Lr.No.C4/3654 /2000, dated 15-2-2001.
2.Hon'ble High Court Judgment dt.28-2-2005 in WP.No.3635/2002.
3. From the Collector, Nizamabad district, Lr.No. C4/899/2005, dated 13-3-2005.

***

I am to forward herewith a copy of Collector's report in respect of the Freedom Fighter of Sri Mulka Rajdeshwar s/o Rajanna of Nizamabad district together with the following certificates/documents for grant of FF Pension under Central Scheme.

1. Applicaion form
2. Copy of HC of AP Judgment dt.19-8-2000 in WP.8444/95
3. Collector, Nizamabad letter dated 15-2-2001.
4. Collector, Nizamabad Memo, dated 18-10-94.
5. Superintendent, Central Prison, Bombay letter dt. 1-9-1994.
6. Certificate of release dt.21-6-1942.
7. Copy of HC of AP Judgment dt.28-1-2005 in

WP.No.3635/2002.

8. Affidavit.
9. PKC issued by Sri Venkataswamy, Freedom Fighter, Nizamabad.
10. Age proof certificate duly attested by Gazetted Officer. 11. Collector, Nizamabad district letter dt.30-3-2005.

2. Earlier, the Collector, Nizamabad has rejected the case on the ground that the register pertaining for the year 1942 of Worli Prison, Bombay is in torn condition and the name of Sri Mulka Rajeswara Rao s/o Mulka Rajanna r/o Nizamabad is not traceable as reported by the Bombay Central Prison, Bombay.

3. Aggrieved by the above orders, the applicant has filed WP.No.8444/95 before the Hon'ble High Court, the Hon'ble High Court Judgment dated 19-8-2000 has directed to the third respondent i.e., District Collector, Nizamabad to consider the original release certificates dated 29-6-1942 which was filed before the Court, but returned to the petitioner to be presented to the third respondent. The third respondent takes into consideration of this and passes appropriate orders. The 3rd respondent shall conduct enquiry and dispose of the matter within a period of 2 months from the date of receipt of this order.

4. I am to inform that keeping in view of the direction of Hon'ble High Court, the Collector, Nizamabad has reported that the case is not considered to recommend to the Government for sanction of FF Pension on the ground that the applicant was in jail for period of 5 months 21 days only and he has also not produced co-prisoners certificate.

5. Meanwhile, the applicant has filed WP.No.3635/2002 with a request that he was kept in lock up as an undertrial prisoner for about two weeks as per the terms of the scheme, the said period of two weeks shall also be taken into consideration besides the period of 5 months 20 days of imprisonment after conviction and thus the total period of imprisonment exceeds six months making him eligible for pension under the said scheme.

6. The Hon'ble High Court observed that the matter requires reconsideration and even in the absence of Co-Prisoner Certificate or Order of detention, in case

any other material is placed by the petitioner to the satisfaction of the 2nd respondent i.e., State Government to establish his plea as to the police custody for a period of two weeks, probably it would be a fit case to recommend to the first respondent i.e., Government of India for sanction of the pension under the Central Scheme.

7. Accordingly, the impugned order dated 13-12-2001 is set aside and the Writ Petition is disposed of with a direction to the second respondent i.e., Govt.of Andhra Pradesh to reconsider the claim of the petitioner in the light of the observations made above and to pass appropriate order in accordance with law, after affording due opportunity to the petitioner, as expeditiously as possible, preferably within a period of 8 weeks from the date of receipt of this order.

8. In view of the direction of the Hon'ble High Court of AP dated 28-1-2005, the Collector, Nizamabad district has reported that the RDO Nizamabad has visited Mosra village of Varni Mandal on 20-3-2005 and met Sri Venkataswamy s/o Govind Swamy and enquired about the personal knowledge of Sri Mulka Rajeshwar s/o Rajanna r/o Nizamabad. Sri Venkataswamy has given statement that Sri Mulka Rajeshwar had participated in Quit India Movement in the year 1942 and he is a bonafide Freedom Fighter who was imprisoned for a period of (5) months and (21) days from 2-1-1942 to 21-6-1942, he was put in police custody for a period of more than (10) days in Worli Police Station.

9. Based on the report received from the District Collector, Nizamabad and keeping in view of the direction of the Hon'ble High Court, dated 28-1-2005 in WP.No.3635/2002 and certificates/documents produced by the applicant in support of his claim for grant of FF pension under Central Scheme is hereby forwarded by this State Government to Government of India for consideration as ordered by the High Court in their orders dated 28-1-2005.

10. The action taken in the matter may kindly be intimated.

Yours faithfully,

Sd/-

for Spl.Chief Secretary to Govt.

(V. Veeresham)
DEPUTY SECRETARY TO GOVERNMENT.

13. In reply affidavit filed by the Union of India, it is stated that all persons, who took part in freedom movement in some way or the other are not eligible for Samman Pension under the “Swatantrata Sainik Samman Pension Scheme, 1980 (the scheme). Only specified category of freedom fighters are eligible for Samman Pension who fulfill the conditions of the scheme by furnishing the proof of claimed sufferings of the nature and in the manner specified in the scheme itself.

14. Further it is stated that the claims of Samman Pension can be considered by the Central Government only when these are duly verified and recommended by the State Governments/U.T. Administrations concerned along with the basis of such recommendations in accordance with the provisions of the scheme. No action is, therefore, possible on the applications sent directly to the Central Government without routing through the State Government/U.T. Administration concerned. As per the scheme, the verification and recommendation report is mandatory in view of the fact that the documents and other evidences of the claims are in the possession of the State Governments/U.T. Administrations and not of

the Central Government.

15. Further it is stated that the WP.No.18288 of 2005 was disposed of by the order of the Hon'ble Court dated 19-8-2005 directing Union of India inter alia as follows:

> "*In view of the aforesaid, the respondent is directed to consider the petitioner's claim for grant of a freedom fighters pension duly considering the recommendations of the second respondent,d ated 15-4-2005, in the correspondence bearing Ref.No.29103/FF.II-A(1)/2000*."

16. It is also stated that under the "Swatantrata Sainik Samman Pension Scheme 1980 (the scheme) any applicant for samnman pension, who claims jail suffering is eligible for the grant of Samman Pension provided the following conditions are fulfilled:

Imprisonment suffering: A person who had suffered minimum imprisonment of six months (three months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidence:

(a) **Primary Evidence**: Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release, etc.

(b) **Secondary Evidence**: In case records of the relevant period are not available, the applicant is required to produce a non-availability of Record Certificate and also the secondary evidence in the form of two co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum of one year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness,

certifies that documentary evidence from the official records, in support of the claimed sufferings is not available. In case the certificate happens to be a sitting or Ex.MP/MLA only one certificate in place of the two is required.

The Non-availability of Record Certificate (NARC) is treated as valid only when the State Government furnishes it in the following manner:

"All concerned authorities of the State Govt. who could have relevant records in respect of the claim of the applicant have been consulted and it is confirmed that the official records of the relevant time are not available"

The claims of Samman Pension can be considered by the Central Government only when these are duly verified and recommended by the State Government/ U.T. Administrations concerned along with the basis of such recommendation in accordance with the provisions of the scheme. No action is, therefore, possible on the applications sent directly to the Central Government without routing the same through the State Government/U.T. Administration concerned. As per the Scheme, the verification and recommendation report of the State Government/UT Administration is mandatory in view of the fact that the documents and other evidences of the claims are in the possession of the State Governments/UT Administrations and not the Central Government.

17. Further it is stated that in the light of the above mentioned provisions of Swatantrata Sainik Samman Pension Scheme, 1980 the case of Shri Mulka Rajeswar was re-examined and the claim was not found fit for sanction of central pension on the following grounds:

(i) The petitioner had applied for pension on the ground of jail suffering for a period of 5 months 21 days (2-1-1942 to 21-6-1942) and furnished a jail certificate which indicated that he wa sin jail for a period of 5 months 21 days only whereas the minimum jail suffering to be eligible for grant of samman pension is six months, as required under the scheme.

(ii) The petitioner had claimed that he was in police custody for about 2 weeks, prior to conviction, but he has failed to produce any documentary evidence in support of the same as required under the scheme.

(iii) In the absence of jail certificates, the petitioner has failed to submit any Co-Prisoner's certificate in the form of two Co-Prisoner's Certificates (CPC) from freedom fighters who have proven jail suffering of minimum period of 1 year and who were with him in the jail.

(iv) The personal knowledge certificate (PKC) furnished by Shri Venkataqswamy is not an acceptable evidence in support of jail suffering. Besides he himself was imprisoned from January 1942 to September 1942 (9 months) in Gulbarga Jail, i.e., during the period the petitioner has claimed to have been in police custody in the Worli Police Station. It is not clear as to how a person, who himself was imprisoned in a different jail during the relevant time, could certify the police custody of a person in some other police station.

(v) The State Government has not specifically recommended the claim of the petitioner for grant of pension, which is a mandatory requirement as per the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980.

18. Further specific stand has been taken that the petitioner has not furnished any fresh/additional documents in order to establish his claim for grant of freedom fighter pension from central revenues as per the provisions of the Swatantrata Sainimk Samman Pension Scheme 1980.

19. The respective contentions advanced by the counsel on record had principally centered in relation to the prior orders made by this Court and in ignorance of the observations made, again insisting for the same material. It appears the writ petitioner is approaching repeatedly and the writ petitions are being disposed of with

appropriate directions.

20. Strong reliance was placed on the decision of the Hon'ble Supreme Court in **GUDIAL SINGH V/s. UNION OF INDIA AND ORS** [1], wherein in relation to the Freedom Fighters Pension Scheme, 1972 – Determination of eligibility and standard of proof required, the Apex Court observed at paragraph nos. 6 and 7 as hereunder:

> *The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the authorities concerned are required that in appreciating the scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari Case (1993 Supp (3) SCC-2) PP.7-8, para 9).*
>
> The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with

which they plunged in the freedom struggle. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

> *The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by the scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters,*

the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probablised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

21. Reliance was also placed on the decision of this Court in **PANJALA RAJAIAH V/s. GOVERNMENT OF INDIA, NEW DELHI**[2]. In the light of the views expressed by the Apex Court in the decision referred supra-1l, this Court is of the considered opinion that the case of the writ petitioner requires re-consideration especially in the light of the observations made by this Court in the prior writ petitions and also in the light of the nature of proof and the standard of proof required as observed by the Apex

Court as stated supra.

22. Accordingly the writ petition is disposed of directing the first respondent to consider the case of the writ petitioner for sanctioning Freedom Fighter's Pension in accordance with law, in the light of the decision of this court stated supra-2 and also the decision of the Apex Court specified supra-1, within a period of four weeks from the date of

receipt of a copy of this Order.

23. This Court does hope that the first respondent shall consider the case of the writ petitioner in proper perspective in the light of series of events. Accordingly the writ petition is disposed of with the above direction. No costs.

JUSTICE P . S .
NARAYANA .
16 /11/2007.

I s L

LR COPY MARKED.
B/o ISL.

---

[1]) **(2001)8 Supreme Court Cases-8**
[2]) 2006 (4) ALD-185